Novelpac-Puncakdana Plantation Sdn Bhd v Anchih anak Buap & Ors

HIGH COURT (SIBU) — SUIT NO 22–48 OF 2000
CLEMENT SKINNER JC
3 AUGUST 2000

Civil Procedure *— Interlocutory injuction — Whether interlocutory injuction different in kind from injuction prayed for in main suit — Whether plaintiff's claim frivolous and vexatious — Whether these are serious issues to be tried — Whether s 41 of the Specific Relief Act 1950 has relevance to applications for interlocutory injuctions*

The plaintiff was granted a provisional lease of state land at Sungai Dasal, Mukah over an area of approximately 1,440 hectares ('the land') to enter into possession of the land subject to the terms and conditions endorsed on the provisional lease. The defendants were the headmen of five longhouses all in the Mukah district. The plaintiff had entered into possession of the land and plan to bring it fully under palm oil cultivation in three phases of development. The plaintiff had also obtained licence to take forest produce from within the land. The plaintiff had commenced works in Phase 1 of its planned development when it complained that all the works they were undertaking on the land had to stop as a result of the actions of the defendants in threatening to use violence against the plaintiff and its subcontractor and setting up blockades on the land to prevent the subcontractor from carrying out any logging operations. The defendants justified their actions and that of the residents of their longhouses on the grounds that they had acquired native customary rights over the land. The plaintiff applied for an interlocutory injunction to restrain the defendants from doing the acts complained of. In making the application and relying on the fact that a provisional lease had been issued in respect of the land to the plaintiff, the plaintiff drew attention to various provisions of the Sarawak Land Code ('the Code') and submitted that the provisional lease, being a document evidencing title to the land, of which the plaintiff had become the registered proprietor, had conferred on the plaintiff an indefeasible interest in the land, and subject to any claims noted on the register, of which there was none, excluded any other claims to the land, including those of the defendants. As the registered proprietor of the land, the plaintiff was entitled to possess, develop and enjoy the same without interruption, hindrance, intimidation, threat or harassment of the defendants. It was submitted that unless the defendants were restrained, the plaintiff would suffer irreparable loss and harm which could not be compensated for by an award in damages. It was the defendant's case that being all Ibans and natives of Sarawak, they had since time immemorial practised and adhered to a system of native customary rights over land situate at or around the longhouses occupied by them. The defendants submitted that the issuance of the provisional lease to the plaintiff in respect of the land was wrongful,

bad in law, void and not capable of extinguishing the customary rights of the defendants in the land which the defendants claimed had come into existence prior to the issuance of the provisional lease. It was further submitted that there was no serious question to be tried because the interlocutory injunction sought by the plaintiff was to restrain the defendants from doing certain things on the 1,440 hectares mentioned in the provisional lease. However, according to the defendants, not all the 1,440 hectares had been given to the plaintiff based on the letter of offer to the plaintiff and one of the terms endorsed on the provisional lease. Relying on this and on the provisions of s 28(1), (2) and (3) of the Code which provides that an alienation of the land only takes place after a survey and registration of a lease in Form B in the First Schedule to the Code, itwas contended that as the plaintiff had not conducted a survey to demarcate the boundaries of the land so as to exclude native customary lands therefrom, no alienation had taken place and the plaintiff was in no position to state that it was entitled to the land, including the areas allegedly trespassed on by the defendants. The defendants also raised the following objections: (i) the injunction was wider in scope than the permanent injunction prayed for in the suit itself; and (ii) the plaintiff's claim for the declarations were not maintainable because the plaintiff had not also sought for possession of the lands occupied by the defendants, by reason whereof the proviso to s 41 of the Special Relief Act 1950 ('the Act') would prevent the plaintiff from obtaining the injunction sought.

Held:

(1) The interlocutory injunction was not of a different kind from those prayed for in the main suit. What the plaintiff had done was that whereas in the third injunction prayed for in the main suit it had identified the acts complained about, ie 'erecting any barrier, roadblock or blockade', in its claim for interlocutory relief, the plaintiff's third injunction sought to restrain the defendants from 'interfering, interrupting or hindering in any manner whatsoever the work of the plaintiff on the land'. After all the act of erecting a barrier, roadblock and blockade were but instances of the manner in which the plaintiff's work might be hindered, interrupted or interfered with. There was nothing objectionable in what the plaintiff had done (see p 537B–D).

(2) The defendants' objection based on s 41 of the Act must be rejected because the plaintiff had in its main suit not confined itself to merely declaratory relief. Further, s 41 of the Act applies only to an application for declaration and has no relevance to applications for temporary injunction as sought for in this case (see p 538B).

(3) Having given careful thought to all the materials placed before the court and the submissions of counsel on them, it could not be said

that the claim of the plaintiff was a frivolous and vexatious one. Rather, it disclosed several bona fide serious issues which require to be tried. Whether the issuance of a provisional lease in respect of the land to the plaintiff and its claim to be entitled to possess, develop and enjoy the same to the exclusion of the defendants or whether the rights of the plaintiff in the land were subject to the native customary rights claimed to be exercised by the defendants over the same areas were issues which could only be determined after a full trial (see p 538F–G).

(4) For the defendants to contend that the letter of offer imposed an obligation on the plaintiff to conduct a survey to exclude NCR lands before it could claim ownership to the 1,440 hectares was tothe misread the letter of offer as well as the provisions of s 28(1), (2) and (3) of the Code. Also, while the question about what point in time alienation of land takes place under the Code is a matter that is best determined at the trial, at this stage of the proceedings the plaintiff was entitled to rely on the proviso to s 28(1) of the Code in support of its assertion (see p 540E–F).

(5) If the plaintiff is prevented from developing the land in accordance with its planned phases, there is a very real prospect that it will be delayed in meeting the time limitation placed on planting up the land which in turn would lead to the plaintiff being in breach of the conditions of the provisional lease thereby rendering the land liable to forfeiture. Such a loss to the plaintiff could not be adequately compensated by an award in damages since the very subject matter of the suit will no longer be available to the plaintiff. On the contrary hypothesis that the defendants were to succeed at the trial to their claim to native customary rights over the land, their loss of such rights could be adequately compensated by an award of damages (see p 541A–C).

(6) Having weighed all the factors, the court found that the justice of the case was such that the harm that would result in the refusal of the grant of the injunction sought outweigh the harm that would result from their grant (see p 543G).

[Bahasa Malaysia summary

Plaintif telah diberikan satu pajakan sementara tanah negeri di Sungai Dasal, Mukah yang mempunyai keluasan lebih kurang 1,440 hektar ('tanah tersebut') untuk mengambil pemilikan tanah tersebut tertakluk kepada terma-terma dan syarat-syarat yang diendorskan pada pajakan sementara itu. Defendan-defendan merupakan ketua kaum bagi lima buah rumah panjang kesemuanya di dalam daerah Mukah. Plaintif telah mengambil milikan tanah tersebut dan mempunyai rancangan untuk mengusahakan penanaman kelapa sawit di atas keseluruhan tanah tersebut dalam tiga fasa pembangunan. Plaintif telah juga memperolehi lesen untuk mengambil hasil hutan

daripada dalam tanah tersebut. Plaintif telah memulakan kerja dalam fasa 1 dari pembangunan yang dirancangnya bilamana ianya mengadu bahawa kesemua kerja-kerja tersebut yang sedang dijalankan oleh mereka terpaksa diberhentikan akibat tindakan defenda-defendan yang mengugut untuk menggunakan kekerasan terhadap plaintif dan kontraktor kecilnya dan mendirikan penghadang pada tanah itu bagi menghalang kontraktor kecil tersebut daripada menjalankan sebarang operasi pembalakan. Defendan-defendan menjustifikasikan tindakan mereka dan juga tindakan-tindakan penghuni rumah panjang atas alasan bahawa mereka telah memperolehi hak adat watan ke atas tanah tersebut. Plaintif telah memohon injunksi interlokutori bagi menghalang defendan-defendan daripada melakukan perbuatan-perbuatan yang diadukan itu. Dalam membuat permohonan tersebut dan bergantung pada fakta bahawa satu pajakan sementara telah dikeluarkan berhubung dengan tanah tersebut kepada plaintif, plaintif telah menarik perhatian kepada pelbagai peruntukan-peruntukan Kanun Tanah Sarawak ('Kanun tersebut') dan berhujah bahawa pajakan sementara itu, yang merupakan sebuah dokumen yang membuktikan hakmilik kepada tanah tersebut, bagi yang mana plaintif telah menjadi tuanpunya berdaftar, telah menganugerahkan ke atas plaintif suatu kepentingan yang tidak boleh disangkal dalam tanah tersebut, dan tertakluk kepada apa-apa tuntutan yang dicatatkan pada daftar tersebut, yang mana tidak terdapat, untuk mengecualikan apa-apa tuntutan yang lain ke atas tanah tersebut, termasuk tuntutan-tuntutan defendan-defendan. Sebagai tuanpunyai berdaftar tanah tersebut, plaintif berhak untuk memiliki, memajukan dan menikmatinya tanpa gangguan, halangan, intimidasi, ugutan atau gangguan berkali-kali oleh defendan-defendan. Adalah dihujahkan bahawa kecuali defendan-defendan dihalang, plaintif akan mengalami kerugian dan kemudaratan yang tidak boleh dipulihkan yang tidak boleh diberikan pampasan melalui satu award bagi ganti rugi. Ianya merupakan kes defendan bahawa sebagai orang Iban dan anak watan Sarawak kesemuanya, mereka telah sejak zaman dahulu kala mengamalkan dan mematuhi sistem hak adat watan ke atas tanah yang terletak di dan sekitar rumah-rumah panjang yang dihuni oleh mereka. Defendan-defendan berhujah bahawa pengeluaran pajakan sementara kepada plaintif berhubung dengan tanah tersebut adalah salah, dan tidak sempurna mengikut undang-undang, batal dan tidak berkeupayaan untuk menghapuskan hak adat watan defendan-defendan di dalam tanah tersebut yang mana defendan-defendan menuntut telah wujud sebelum pengeluaran pajakan sementara tersebut. Adalah selanjutnya dihujahkan bahawa tidak terdapat persoalan yang serius untuk dibicarakan kerana injunksi interlokutori yang dipohon oleh plaintif adalah untuk menghalang defendan-defendan daripada melakukan perkara-perkara tertentu di atas 1,440 hektar yang disebut dalam pajakan sementara tersebut. Walau bagaimanapun, menurut defendan-defendan bukan kesemua 1,440 hektar tersebut telah diberikan kepada plaintif berdasarkan surat

tawaran kepada plaintif dan salah satu daripada terma-terma yang diindorskan pada pajakan sementara tersebut. Bergantung kepada perkara ini, dan kepada peruntukan-peruntukan s 28(1), (2) dan (3) Kanun tersebut yang mana memperuntukkan bahawa sesuatu pemberimilikan tanah tersebut hanya berlaku selepas suatu ukuran dan pendaftaran sesuatu pajakan dalam Borang B di dalam Jadual Pertama Kanun tersebut, adalah dihujahkan bahawa oleh kerana plaintif telah tidak mengendalikan ukuran untuk memisahkan sempadan-sempadan tanah tersebut bagi mengecualikan tanah-tanah adat watan tersebut daripadanya, maka tiada pemberimilikan telah berlaku dan plaintif tidak mempunyai kedudukan untuk menyatakan bahawa ianya berhak kepada tanah tersebut, termasuk kawasan-kawasan yang dikatakan telah diceroboh oleh defendan-defendan. Defendan-defendan juga membangkitkan bantahan-bantahan yang berikut: (i) injunksi tersebut mempunyai bidang yang lebih luas daripada injunksi tetap yang dipohon dalam guaman itu sendiri; dan (ii) tuntutan plaintif bagi pengisytiharan itu tidak boleh dipertahankan kerana plaintif telah tidak juga memohon untuk pemilikan tanah-tanah yang diduduki oleh defendan-defendan, disebabkan olehnya proviso kepada s 41 Akta Relif Tertentu 1950 ('Akta tersebut') akan menghalang plaintif daripada mendapatkan injunksi yang dipohon.

Diputuskan:

(1) Injunksi interlokutori itu bukannya berlainan daripada yang telah dipohon dalam guaman utama. Apa yang telah dilakukan oleh plaintif adalah bahawa sedangkan dalam injunksi ketiga yang dipohon dalam guaman utama tersebut ianya telah mengenalpasti perbuatan-perbuatan yang telah diadukan, iaitu 'membina apa-apa halangan, sekatan jalanraya atau sekatan', dalam tuntutannya untuk relif interlokutori, injunksi ketiga plaintif memohon untuk menghalang defendan-defendan daripada 'bercampur tangan, menganggu atau menghalang dalam apa cara sekalipun kerja plaintif atas tanah tersebut'. Namun begitu kesemua perbuatan mendirikan sekatan, membuat sekatan jalan dan halangan adalah cuma keadaan-keadaan cara dalam masa kerja plaintif boleh dihalang, diganggu atau dikacau-ganggui. Tidak terdapat apa-apa yang boleh dibantah dalam apa yang telah dilakukan oleh plaintif (lihat 537B–D).

(2) Bantahan defendan berdasarkan s 41 Akta tersebut mestilah ditolak kerana plaintif telah dalam guaman utamanya tidak menghadkan dirinya kepada hanya relif pengisytiharan. Selanjutnya, s 41 Akta tersebut terpakai hanya kepada sesuatu permohonan untuk pengisytiharan dan tiada kaitan dengan permohonan untuk injunksi sementara sepertimana yang dipohon dalam kes ini (lihat ms 538B).

(3) Setelah memikirkan dengan teliti kesemua bahan-bahan yang dikemukakan di hadapan mahkamah dan penghujahan-penghujahan peguam mengenainya, ianya tidak boleh diperkatakan bahawa tuntutan plaintif adalah suatu tuntutan yang remeh dan menyusahkan. Malahan, ianya mendedahkan beberapa isu bona fide yang serius yang perlu dibicarakan. Sama ada pengeluaran satu pajakan sementara berkenaan tanah tersebut kepada plaintif serta tuntutannya untuk berhak bagi memiliki, memajukan dan menikmatinya dengan mengecualikan defendan-defendan atau sama ada hak plaintif dalam tanah tersebut adalah tertakluk kepada hak adat watan yang dituntut telah dilaksanakan oleh defendan-defendan ke atas kawasan-kawasan yang sama merupakan isu-isu yang hanya boleh ditentukan selepas satu perbicaraan penuh (lihat ms 538F–G).

(4) Untuk defendan-defendan menegaskan bahawa surat tawaran tersebut telah mengenakan suatu kewajipan ke atas plaintif untuk menjalankan kerja mengukur bagi mengecualikan tanah hak adat watan sebelum ianya boleh menuntut milikan bagi 1,440 hektar tersebut adalah untuk membaca secara salah surat tawaran itu dan juga peruntukan s 28(1), (2) dan (3) Kanun tersebut. Juga, sementara persoalan mengenai bilakah pemberimilikan tanah tersebut berlaku di bawah Kanun tersebut adalah suatu perkara yang sebaiknya ditentutan di perbicraan, di peringkat ini dalam prosiding tersebut plaintif adalah berhak untuk bergantung pada provisio kepada s 28(1) Kanun tersebut bagi menyokong penegasannya (lihat ms 540E–F).

(5) Jika plaintif dihalang daripada memajukan tanah tersebut menurut fasa-fasa yang telah dirancang, ada kemungkinan besar bahawa ianya akan lewat dalam memenuhi had masa yang diletakkan dalam memulakan tanaman atas tanah tersebut yang selanjutnya akan menyebabkan plaintif melanggar syarat pajakan sementara tersebut yang akan menjadikan tanah tersebut boleh dilucuthak. Kerugian sedemikian kepada plaintif tidak boleh diberikan pampasan yang secukupnya melalui satu award ganti rugi kerana perkara pokok guaman tersebut tidak lagi wujud pada plaintif. Atas hipotesis bertentangan bahawa defendan-defendan berjaya di perbicaraan dalam tuntutan mereka ke atas hak adat watan atas tanah tersebut, kehilangan mereka atas hak sedemikian boleh diberikan award ganti rugi yang secukupnya (lihat ms 541A–C).

(6) Setelah menimbang kesemua faktor-faktor tersebut, mahkamah mendapati bahawa keadilan kes tersebut adalah sedemikian rupa sehinggakan kemudaratan yang akan diakibatkan dalam keengganan untuk memberikan injunksi yang dipohon adalah lebih daripada kemudaratan yang akan diakibatkan dari pemberiannya (lihat ms 543G).]

Notes

For cases on interlocutory injunction, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2112–21800.

Cases referred to

American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 (refd)
Garden Cottage Foods Ltd v Milk Marketing Board [1984] AC 130 (refd)
KPM Aboobucker v K Kunhamoo AIR 1958 Madras 287 (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)
Ram Saran & Anor v Smt Ganga Devi AIR 1972 SC 2685 (refd)
Tan Suan Choo v Majlis Perbandaran Pulau Pinang [1983] 1 MLJ 323 (refd)
VD Tripathi & Ors v VS Dwivedi & Ors AIR 1976 All 97 (refd)

Legislation referred to

Civil Procedure Code 1908 [India] O 39 r 1(a), r 2
Sarawak Land Code (Cap 81) ss 2, 5, 5(2)(e), 10(1), 28(1), (2), (3), (4), 29, 132, First Schedule Form B
Specific Relief Act 1877 [India] s 42
Specific Relief Act 1950 ss 41, 51(1), proviso to s 41, Chapters VI, IX
Rules of the High Court 1980 O 29, O 29 r 1(1)

Arthur Lee (*Arthur Lee Lin & Co*) for the plaintiff.
MS Sandhu (*MS Sandhu & Co*) for the defendant.

Clement Skinner JC: This is an application by the plaintiff for interlocutory injunctions to restrain the defendants from doing the acts hereinafter complained of. The plaintiff was formerly known as Novelpac Sdn Bhd. The five named defendants are the 'Tuan Rumah' or headmen of five longhouses identified as Rumah Anchih, Rumah Ketip, Rumah Lipo, Rumah Lanyau and Rumah Mulok ('the longhouses'), all in the Mukah or Balingian district, near Selangau, Sarawak. The five defendants represent the residents of the said longhouses and are sued in their own behalf as well as representatives of all the residents of their respective longhouses.

On or about 28 May 1999, the Superintendent of Lands and Surveys, Sibu, ('the Superintendent') issued to the plaintiff a Provisional Lease of State Land at Sungai Dasai, Mukah, over an area of approximately 1,440 hectares described as Lot 11, Buloh Land District ('the said land') wherein the Superintendent agreed, in consideration of the payment of premium and of the rent reserved in the Provisional Lease, to the plaintiff entering into possession of the said land subject to the terms and conditions indorsed on the Provisional Lease which take the form of 'Restrictions and Special Conditions'. It will not be necessary to set out here all those terms and conditions except those that are relevant to the issues raised by this application. Thus, it is a condition of the plaintiff occupying the said land that:

(1) it shall be used only for agriculture purposes and for processing of crops grown thereon and such other purposes as may be approved by the Director of Lands and Surveys,

(2) the plaintiff shall not extract timber or mineral deposits from the said land without an appropriate licence issued by the relevant authority;

(3) the plaintiff shall commence field planting within three years of the issue of the Provisional Lease and shall complete at least 50% of the planting of the nett plantable area at the end of the seventh year;

(4) a breach or a default in the observance of any of the conditions specified in the Provisional Lease shall render the said land liable to forfeiture;

(5) the plaintiff as holder of the Provisional Lease shall not be entitled to a lease of an area equal to the 1,440 hectares stated in the Provisional Lease but only to such an area as the survey shows to be available;

(6) the plaintiff will undertake an Environmental Impact Assessment study ('the EIA study') on the area prior to project implementation.

The plaintiff has, accordingly, since June and July 1999 entered into possession of the said land and plan to bring it fully under palm oil cultivation in three phases of development. The plaintiff has commenced works in phase 1 of its planned development and these works include the construction of drainage and desilting a river within the said land. The plaintiff has also obtained from the Director of Forests, Forest Department, Sarawak, a licence to take forest produce (hereafter 'the licence') from within the said land. The licence permits the plaintiff to take all species of forest produce except belian and the protected species listed in the licence. The licence lasts for a period of one year from 17 September 1999. For completeness, I mention that the licence issued to the plaintiff authorizes it to also take forest produce from an area of land neighbouring to the said land known as Lot 12. The plaintiff has engaged a company called Alwayield Sdn Bhd (hereinafter 'the subcontractor') to undertake the works of taking forest produce. To enable it to do so, the subcontractor has constructed a rail system to the area of extraction. By way of further background information, Lot 11 and Lot 12 measure in total some 3,720 hectares, of which Block 11, which comprises the said land, measures some 1,440 hectares. As explained later, the plaintiff originally applied for and was approved 5,000 hectares of land, but, after excluding what the Superintendent described as 'NCR lands', only 3,720 hectares were available for alienation to the plaintiff.

The plaintiff complains that it and its sub-contractor have had to stop all the works they are undertaking on the said land as a result of the following actions of the defendants:

(i) On 17 April 2000 a large number of persons claiming to be residents of the aforementioned longhouses set up blockades on the said land to prevent the subcontractor from carrying out any logging operations and ordered the subcontractor to stop work.

(ii) On 24 April 2000 some 60 residents claiming to be from the abovementioned longhouses turned up at the site where drainage works were in progress. Some of these persons were armed with parangs. They ordered the plaintiff's workers to stop work with threats of violence if the plaintiff's workers refused to do so. As a result, the plaintiff's workers attempted to remove its excavator from the site but were forcibly restrained from doing so with the ignition key of the excavator being seized. The plaintiff's workers were allegedly threatened with the use of force if they were to continue work again. The 60 or more persons then set up a barricade made of logs at a road identified as AB Road, Block 5, and performed a 'miring ceremony', raised the state flag and beat a gong. As a result of this incident, the plaintiff's workers returned to their base and lodged a police report.

(iii) On 26 April 2000 these same persons from the aforementioned longhouses dismantled more than 20 pieces of rails laid by the subcontractor for their logging operations and set fire to the sleepers, thereby cutting off the rail tracks leading to the extraction area. The subcontractor's workers were ordered to leave their camp site immediately under threat of being beheaded and having their camp site burnt down if they did not do so. As a result, the subcontractor's workers apparently panicked, resulting in the subcontractor having to write to the Commissioner of Police for assistance.

The defendants, although denying the plaintiff's allegation of violence, of threats to use violence and of setting fire to the railway sleepers, admit to setting up the blockades complained of of taking away the keys to the excavator; and to dismantling the rail tracks leading to the extraction area. The defendants justify their action and that of the residents of their longhouses, on grounds that they claim to have acquired native customary rights over the said land. Before the defendants embarked upon the actions complained of, they had written a letter to the plaintiff on 28 January 2000 in which they enclosed a map on which a large area of land was marked out which the defendants claimed to be 'our native customary land', which encompassed or included within its area the said land. Since this letter sets the tone for the dispute between the parties and gives insight into the stand of the defendants, I set out three paragraphs of the defendants' letter:

> We are writing pertaining to the activities of your company and/or your contractors, agents or servants such as Puncakdana Sdn Bhd and Alwayfield Sdn Bhd within the boundary of our communal native customary land involving the clearance of our said customary land and the felling and/or extraction of timbers therefrom.
>
> We would like to bring to your attention that under s 28 of the Sarawak Land Code (Cap 81), the authorities are only empowered to grant a provisional lease over state land and NOT native customary land. Even if such a provisional lease was issued over native customary land, it is issued subject to prior and subsisting native customary rights (NCR) therein and a survey must be made by the holder whereby if there are lands subject to NCR within the leased area these NCR lands must be excluded therefrom.

Further, under s 2 of the Sarawak Forest Ordinance (Cap 126), the authorities are only empowered to grant permit for the taking of forest produce (including timbers) from state land areas but not native customary land. Further, if a permit was issued and if it includes NCR lands, the permit is subject to NCR over the said land.

When the defendants took the actions complained of, the plaintiff, finding its work and that of its subcontractor hindered and fearing for the safety of its workers and that of its subcontractor, commenced this action on 5 May 2000, and on the same day filed the present application claiming the following relief:

(1) that an interlocutory injunction be granted restraining the defendants whether by themselves, servants, agents or otherwise howsoever from entering and/or trespassing on the plaintiff's land described as Lot 11 Buloh Land District;

(2) that an interlocutory injunction be granted restraining the defendants whether by themselves, servants, agents or otherwise howsoever from intimidating, abusing or otherwise threatening the plaintiff's workers, servants or agents while performing their work on the said land;

(3) that an interlocutory injunction be granted restraining the defendants whether by themselves, servants, agents or otherwise howsoever from interfering, interrupting or hindering in any manner whatsoever the work of the plaintiff, its workers, servants or agents on the said land.

There was also the usual prayer for any other relief the court may deem fit and for costs.

In making the application and relying on the fact that a Provisional Lease had been issued in respect of the said land to the plaintiff, Mr Arthur Lee of counsel for the plaintiff drew attention to various provisions of the Sarawak Land Code ('the Code') and submitted that the Provisional Lease, being a document evidencing title to the said land, of which the plaintiff had become the registered proprietor, had conferred on the plaintiff an indefeasible interest in the said land, and, subject to any claims noted on the register, of which there is none, to exclude any other claims to the said land, including those of the defendants. Mr Arthur Lee submitted that as registered proprietor of the said land, the plaintiff is entitled to possess, develop and enjoy the same without interruption, hindrance, intimidation, threat or harassment of the defendants, more so when an indorsement in the Provisional Lease classifies the said land as 'Mixed Zone Land' because s 10(1) of the Code provides in its material part that 'without prejudice to s 5(2)(e) or to s 29 or to the provisions of any written law, no person may occupy or exercise any rights or privileges over any Mixed Zone Land or Native Area Land save under a valid and subsisting document of title ...'. According to Mr Arthur Lee, the plaintiff's use and occupation of the said land, under colour of a document of title, is in accordance with the law whereas the defendants cannot show that they have any of the rights referred to in s 5(2)(e) or s 29 of the Code or any written laws.

Mr Lee accordingly submitted that unless the defendants are restrained, the plaintiff will suffer irreparable loss and harm which cannot be compensated for by an award in damages. A

In resisting the plaintiff's application, Mr Sandhu of counsel for the defendants elaborated in greater detail on what the defendants had already stated in their letter of 28 January 2000 addressed to the plaintiff. It is the defendants' case that being all Ibans and natives of Sarawak, they have since time immemorial practised and adhered to a system of native customs and laws by which they claim to have acquired native customary rights over land situate at or around the longhouses occupied by them. Thus, it is asserted by the defendants that they and their ancestors have been occupying and using that large area of land (identified in the map they had enclosed in their letter to the plaintiff on 28 January 2000), including the said land, in accordance with such native customs and laws to live on and carry on shifting cultivation of padi and other crops thereon depend; on the rivers as a source of water supply and fish; collect forest produce, medicinal plants, vegetables and fruits from the primary forest which they refer to as their 'pemakai menua', 'pulau', 'pala kebun' or 'pala umai' and from the secondary forest which they refer to as 'temuda'; they also hunt for animals and birds therefrom and bury their dead thereon. B C D

The defendants complain that before granting the Provisional Lease over the said land to the plaintiff, neither the Superintendent, nor any government department or officers consulted them or the other residents of the longhouses over the same by reason whereof, they have without their consent and without being paid any compensation been deprived of their rights over the said land. The defendants accordingly maintain that their native customary rights over the said land have not been surrendered and neither have they received from the government any notice of extinguishment of such rights. E F

Relying on the above assertions, the defendants say that the issuance of the Provisional Lease to the plaintiff in respect of the said land is wrongful, bad in law, void, and not capable of extinguishing the customary rights of the defendants in the said land; customary rights which the defendants claim had come into existence prior to the issuance of the Provisional Lease. G

Mr Sandhu went on to submit on behalf of the defendants that there is no serious question to be tried because the interlocutory injunctions sought by the plaintiff are to restrain the defendants from doing certain things on the 1,440 hectares mentioned in the Provisional Lease. However, according to Mr Sandhu, not all the 1,440 hectares have been given to the plaintiff because according to counsel: (i) in a letter dated 19 February 1998 written by the Superintendent to the plaintiff ('the letter of offer'), it was stated, and I quote: H

> Application for land for oil palm plantation I
>
> I wish to advise that YAB Ketua Menteri/Menteri Perancangan Sumber has approved the issue of a Provisional Lease of a parcel of land containing 5,000

> hectares approximately to Novelpac Sdn Bhd for oil palm plantation. However, upon exclusion of NCR lands, the area available for alienation is only 3,720 hectares as shown on the attached plan. Please confirm whether It is acceptable to you.

And (ii), one of the terms indorsed on the Provisional Lease as part of the 'Restrictions and Special Conditions' reads:

> The holder of this Provisional Lease shall not be entitled to a lease of an area equal to the area above stated but only to such an area as the survey shows to be available.

Relying on what is stated above and on the provisions of s 28(1), (2) and (3) of the Code, which, according to Mr Sandhu, provides that an alienation of the said land only takes place after a survey and registration of a lease in Form B in the First Schedule of the Code; it was contended that as the plaintiff had not conducted a survey to demarcate the boundaries of the said land so as to exclude native customary lands therefrom, no alienation has taken place and the plaintiff is in no position to state that it is entitled to the said land, including the areas allegedly trespassed on by the defendants. According to Mr Sandhu, until the extent and area of the land over which the plaintiff can assert ownership is known by a proper survey, the plaintiff's claim for relief cannot succeed by reason whereof it cannot be said that there are any serious issues to be tried.

Mr Sandhu submitted that for the above reasons and for other technical reasons which I shall go into shortly, the injunctions sought by the plaintiff should be refused. According to counsel, if the injunctions are granted, irreparable harm would be suffered by the defendants because not only would areas planted up with crops within the said land be destroyed and evidence relating to such activity disappear, but the livelihood of the defendants would also be threatened and their most cherished asset, namely, the ability to pass on their native customary rights over the area claimed by them to their descendants would be lost. It was contended that such loss cannot be compensated by an award in damages.

Before considering the merits of the application, I shall first deal with the law. The principles for the grant or refusal of interlocutory relief are well established and were stated by Lord Diplock in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504. It is that on the material available to the court at the hearing of the application for interlocutory injunction, the court must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. If so satisfied, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. These principles have been restated by our own Court of Appeal in the case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193, where his Lordship Gopal Sri Ram JCA, usefully summarised what a judge hearing an application for interlocutory injunction should inquire into. For convenience, I set them out now, (and here I quote from the headnotes of the decision as reported) at pp 195–196:

A judge hearing an application for an interlocutory injunction should:

(1) ask himself whether the totality of the facts presented before him disclosed a bona fide serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move on to the next step of his inquiry;

(2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and

(3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the status quo. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

Having addressed myself on the law and the approach I should take, I now turn to consider the evidence that has been placed before the court on the various matters that I need to enquire into and the submissions of counsel on them, but before I do so, I shall first deal with several objections, based on technical grounds, raised by Mr Sandhu, on behalf of the defendants against the grant of the injunctions. It was said that the interlocutory injunctions sought are defective in form as they are not of limited duration in that they are not expressed to last until the hearing of this action or until further order. It was also said that they are wider in scope than the permanent injunctions prayed for in the suit itself. It was next said that the plaintiff had delayed in coming to court for the relief sought. It was lastly said that the interlocutory injunctions sought are premature, not in the public interest and burdensome. When the case was adjourned for further argument, Mr Sandhu raised a further objection at the resumed hearing. He submitted that the peg upon which the plaintiff hangs its application for interlocutory injunctions is its claim for the two declarations sought in the main suit, namely: (a) that it is entitled to work on and occupy the said land without interruption, interference, intimidation or hinderance from the defendants, their servants or agents or howsoever; and (b) that the said land is not subject to any encumbrance and/or claim under native customary rights or licence whatsoever. However, according to Mr Sandhu, the plaintiff's claim for these declarations are not maintainable because the plaintiff has not also sought for possession of the lands occupied by the defendants, by reason whereof the proviso to s 41 of the Specific Relief Act 1950 ('the Act'), which states that '... no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so', would prevent the plaintiff from obtaining the injunctions sought.

Of the above four technical objections, I find the objections relating to delay and prematurity are more conveniently dealt with when I come to consider the justice of this case. In so far as the objection based on form and scope is concerned, I regret I find no merit in it. Mr Sandhu complained that the interlocutory injunctions sought are different from the permanent injunctions sought. However, in submissions it appears that what he complains about is the scope of the interlocutory orders which he says is wider than the permanent injunctions. To begin with, I do not think the interlocutory injunctions are of a different kind from those prayed for in the main suit. They are of a like kind or are similar in nature. What the plaintiff has done is that whereas in the third injunction prayed for in the main suit it has identified the acts it complains about, such as for example, 'erecting any barrier, roadblock or blockade or any such devise', in its claim for interlocutory relief, the plaintiff's third injunction seeks to restrain the defendants from 'interfering, interrupting or hindering in any manner whatsoever the work of the plaintiff, its workers, servants or agents on the said land.' I see nothing objectionable in what the plaintiff has done; after all, the act of erecting a barrier, roadblock and blockade are but instances of the manner in which the plaintiff's work may be hindered, interrupted or interfered with. I agree that the interlocutory orders are expressed in wider terms but I can see the reason for the plaintiff having to do so. If the plaintiff were to limit the restraint to erecting barriers, roadblocks or blockades only, then the defendants could willy nilly circumvent the injunctions by simply devising other ways to disrupt the plaintiff's work. I do not find what the plaintiff has done to be contrary to O 29 Rules of the High Court 1980 ('the RHC') because while the plaintiff has prayed for permanent injunctions in this action, that fact would not, in my view, prevent the plaintiff from coming to court, pending the disposal of the main suit, to seek interim relief from a particular situation it may find itself facing and which may not have been covered by the prayers for permanent injunction in the main suit. Order 29 r 1(1) of the RHC in fact caters for such a situation. Thus, any party to a cause or matter may apply for an injunction ' ... whether or not a claim for the injunction was included in that party's writ, ...' If I were to accede to Mr Sandhu's argument, I would be limiting the scope and usefulness of the procedure afforded by O 29 of the RHC and I see no good reason to do so. Mr Sandhu referred to two Indian authorities in support of his submission, namely, that of *KPM Aboobucker v K Kunhamoo* AIR 1958 Madras 287 and *VD Tripathi & Ors v VS Dwivedi & Ors* AIR 1976 All 97. I regret I have not found them of assistance in deciding the issue before me because they are distinguishable both on the facts and the relevant provisions of Indian law involved in the grant of injunctions in those cases. In *KPM Abdoobucker* the court there was considering an application for an injunction under O 39 r 1(a) of the Civil Procedure Code 1908 of India, which deals with the preservation of property in dispute and is nothing like our O 29 of the RHC. Likewise, the case of *VD Tripathi* concerned O 39 r 2 of the Civil Procedure Code of India which deals specifically with restraining breach of contracts.

With regard to Mr Sandhu's objection based on s 41 of the Act, I must with respect, reject it. The plaintiff has in Its main suit not confined itself to

merely declaratory relief. It has by way of additional relief also sought damages as well as the permanent injunctions. The case of *Ram Saran & Anor v Smt Ganga Devi* AIR 1972 SC 2685 upon which the defendants rely was a case concerning s 42 of the Indian Specific Relief Act 1877 where the plaintiff there merely sought declaratory relief only even though the defendant was in occupation of part of premises claimed by the plaintiff. The facts there were therefore entirely different from those in our case where the plaintiff has not confined itself to merely declaratory relief. As a further reason for rejecting the submission, it is my view that s 41 of the Act applies only to an application for declaration and has no relevance to applications for temporary injunctions as now sought in this case. This is so because s 41 is found in Chapter VI of the Act which is entitled 'Declaratory Decrees' and deals exclusively with declarations only. Temporary injunctions are dealt with in Chapter IX of the Act which is entitled 'Of Injunctions Generally', and s 51(1) which is found in that chapter states specifically that temporary injunctions 'may be granted at any period of a suit, and are regulated by the law relating to civil procedure', for which, reference must be made to O 29 of the RHC which does not contain any prohibition of the nature mentioned in s 41. In so holding, I have followed the interpretive process and reasoning of Edgar Joseph Jr J (as his Lordship then was) in the case of *Tan Suan Choo v Majlis Perbandaran Pulau Pinang* [1983] 1 MLJ 323, which was approved of by the Court of Appeal in the case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors.*

In so far as it is complained that the injunctions sought are unlimited in duration, that complaint is easily remedied by an appropriate order limiting the duration of any interlocutory injunction granted until the trial of this action. With that, I now turn to the merits of the application.

Is there a serious issue to be tried?

Having given careful thought to all the materials placed before me and the submissions of counsel on them, I cannot say that the claim of the plaintiff is a frivolous and vexatious one. Rather, I can with confidence say that it discloses several bona fide serious issues which require to be tried. Whether the issuance of a Provisional Lease in respect of the said land to the plaintiff and its claim to be entitled to possess, develop and enjoy the same to the exclusion of the defendants or whether the rights of the plaintiff in the said land are subject to the native customary rights claimed to be exercised by the defendants over the same are issues which can only be determined after a full trial. I say so for the following reasons: In the first place, the assertions of the plaintiff are not frivolous or bare assertions; they are supported by respectable evidence in the form of the Provisional Lease, and made with reference to particular sections of the Sarawak Land Code of which the following have been cited: s 2 which defines a 'document of title' to mean 'a grant, lease of State land, occupation ticket or any other document evidencing title to land whenever issued'; to s 28(4) of the Code which provides that 'save where the context otherwise requires, the provisions of this Code in connection with leases shall apply to provisional leases and references to a lease shall include a provisional lease'; and to s 132 of the

Code which provides to the effect that the registered proprietor of any estate or interest in land shall hold such estate or interest subject to the interests noted on the register but free from all other interest. In this case, the Provisional Lease was issued on 28 May 1999, and expressly authorizes the plaintiff to have possession of and to undertake agricultural development thereon. The law is that I am not required to decide, at this stage of the proceedings, the correctness or otherwise of the plaintiff's claim.

Secondly, the defendants' assertions that the plaintiff cannot exercise such rights over the said land because the issuance of the Provisional Lease to the plaintiff is unlawful, void and incapable of extinguishing the defendants' claim to customary rights over the said land in itself gives rise to a serious question that requires to be tried because the validity of the defendants' assertion depends upon whether or not they can establish, in accordance with the laws of Sarawak, that the said land forms part of native customary lands. That is a question of both fact and law because by s 2 of the Code, 'Native Customary Land' means:

> (a) land in which native customary rights whether communal or otherwise, have lawfully been created prior to the 1 January 1958, and still subsists as such;
>
> ...

The defendants of course assert that they and their ancestors have been exercising customary rights over the said land for many generations through the various activities earlier described but the plaintiff disputes such assertion and has adduced evidence in the affidavit of Jabieng ak Manjan affirmed on 30 May 2000, to the effect that none of the five longhouses named in this suit are situated within the said land or Lot 12 Buloh Land District and that only Rumah Ketip and Rumah Darai are found within a radius of three kms from the said land but outside its boundary. Even then, Jabieng's affidavit goes on to state that Rumah Ketip moved to its present site in 1981 only. Jabieng's affidavit also goes on to disclose that the second defendant, Tuai Rumah Ketip anak Impang, was fined by the Chief's Native Court in Balingian in 1995 for use of State land. This latter assertion is elaborated on in the affidavit of Penghulu Empaling ak Beji, affirmed on 5 June 2000 on behalf of the plaintiff. He states that the second defendant moved his longhouse (Rumah Ketip) from Sungai Anus to its present site at Bukit Keladang in or around 1981. At Bukit Keladang, Rumah Ketip used State land without permission as a burial ground for four corpses for which the second defendant was brought before the Chief's Native Court at Balingian in case No PDB/NC/1/95(2) and fined RM300. Penghulu Empaling was sitting with two other assessors in that case. Now, Jabieng was born in Mukah in 1955 and remained there since. He was appointed Councillor for Mukah Local Authority from 1994–1997. He states he is familiar with all the longhouses in the Mukah/Selangau area including those named in this suit. Likewise, Penghulu Empaling states that he was born in Mukah in 1946 and has remained there since. His father the late Penghulu Beji anak Sentu was appointed penghulu for the Balingian area around 1958 until his death in 1991 and Empaling was appointed penghulu of the Balingian area since April 1994.

The purpose of the plaintiff adducing the above evidence was to show that the defendants' claim to have acquired native customary rights over the said land prior to 1 January 1958 is doubtful and not to be believed. The defendants have through Ketip ak Impang's second affidavit affirmed on 8 June 2000, denied what is asserted by Jabieng and Penghulu Empaling, but, as I have already indicated earlier, it is not my function to resolve, at this stage of the proceedings, this dispute that has arisen on the facts save only to say that they give rise to serious issues revolving around the defendants' claim to have acquired native customary rights over the said land and which can only be determined at the trial of this action.

Thirdly, the submission of Mr Sandhu to the effect that until the plaintiff has conducted a survey to exclude native customary lands from the 1,440 hectares granted to it by the government, the plaintiff cannot claim that it is entitled to the particular area or areas of land, including the areas allegedly trespassed by the defendants, is a submission which, with respect, is misplaced because a proper reading of the letter of offer dated 19 February 1998 written to the plaintiff by the Superintendent shows that whereas the YAB Ketua Menteri had approved the issue of a provisional lease to the plaintiff for an area of 5,000 hectares, the whole 5,000 hectares could not be alienated to the plaintiff because after the exclusion of native customary lands, only 3,720 hectares was available for alienation to the plaintiff. That is what the words 'However, upon exclusion of the NCR lands, the area available for alienation is only 3,720 hectares as shown on the attached plan' mean, and not as contended by the defendants. For the defendants to contend that the letter of offer imposes an obligation on the plaintiff to conduct a survey to exclude NCR lands before it can claim ownership to 1,440 hectares is, in my view, to misread the letter of offer as well as the provisions of s 28(1), (2) and (3) of the Code. Also, while the question about what point in time alienation of land takes place under the Sarawak Land Code is a matter that is best determined at the trial, at this stage of the proceedings is the plaintiff not entitled to rely on the proviso to s 28(1) of the Code in support of its assertion? That proviso expressly recognizes that it may be impracticable to conduct an immediate survey of the said land and for that very reason the Superintendent is permitted by law to issue to the plaintiff a Provisional Lease which when the provisions of s 28(4) and the definition of a 'document of title' in s 2 are read, does not in my view, make the claim by the plaintiff that it is entitled to exclude the defendants from the said land a frivolous one. I accordingly reject the submission of the defendants that in the absence of a survey plan of the said land, there is no serious issue to be tried.

Having found that there are serious questions to be tried, I now move on to the next stage of my enquiry by considering where the justice of the case lies. I do so by taking into account the following factors:

Is damages an adequate remedy?

I ask myself whether if the plaintiff were finally to succeed at the trial of this action it would be adequately compensated by an award in damages for the

loss it would have sustained as a result of the defendants' actions complained about. In my view, if the plaintiff is prevented from developing the said land in accordance with its planned phases, there is a very real prospect that it will be delayed in meeting the time limitation placed on planting up the said land which in turn will lead to the plaintiff being in breach of the 'Restrictions and Special Conditions' indorsed on the Provisional Lease thereby rendering the said land liable to forfeiture. Such a loss to the plaintiff cannot, in my view, be adequately compensated by an award in damages since the very subject matter of the suit will no longer be available to the plaintiff. On the contrary hypothesis that the defendants were to succeed at the trial to their claim to native customary rights over the said land, it is my view that their loss of such rights can be adequately compensated by an award in damages. The defendants have complained that the Provisional Lease was issued to the plaintiff without their (the defendants) being consulted or compensation being paid to them. This latter complaint must surely be clear indication that the defendants themselves regard the loss of their rights as a matter capable of being compensated in monetary terms. Similarly, the defendants' assertion that their rights over the said land have not been extinguished must again be an assertion made in recognition of the fact that under the Sarawak Land Code, the extinguishment of native customary rights is a matter compensable in monetary terms as recognized in s 5 of the Code.

Are the injunctions premature, burdensome and not in the public interest?

It was alleged by the defendants that as the plaintiff had not conducted a survey of the said land, it would be premature and burdensome to grant the injunctions sought since the plaintiff cannot show that the acts complained of occurred within the said land. It was also said that it would not be in the public interest to allow the plaintiff, by the grant of the injunctions, to escape its responsibility of conducting a survey to exclude native customary lands particularly when it is provided in s 28 of the Code and the Provisional Lease itself that the area and extent of the land given to the plaintiff is not final. With respect, I find no merit in these allegations. In the first place, as I had indicated earlier when discussing the question of the survey, the letter of offer did not require the plaintiff to undertake a survey to exclude native customary lands as alleged. In so far as the public interest is concerned, it must not be forgotten that it was the government that issued a Provisional Lease over the said land to the plaintiff and in the letter of offer written to the plaintiff on 19 February 1998, was careful to indicate that even though 5,000 hectares had been originally approved to the plaintiff, only 3,720 hectares were available for alienation after exclusion of native customary lands. On that premise, it would be reasonable to infer that the government had in fact taken into account the public interest, including that of the indigenous people such as the defendants, in seeing to it that native customary lands were excluded from the said land offered to the plaintiff.

I also find support for my above conclusion by the working map of the said area that has been supplied by the Superintendent and which was annexed to Khor Seow Hoon's second affidavit affirmed on 22 July 2000.

This working map contains a key or legend which shows that when the plaintiff originally applied for 5,000 hectares of land from the government, the 5,000 hectares applied for included many areas with secondary growth or secondary forest but that the government excluded these areas of secondary growth or forest thereby reducing the area available for alienation to the plaintiff to only 3,720 hectares. This therefore explains and puts into its proper context the sentence in the letter of offer from the government to the plaintiff that '... upon exclusion of the NCR lands, the area available for alienation is only 3,720 hectares ... .'

With regard to the submission that in the absence of a survey, the injunctions, if granted, would be premature and burdensome, I regret I cannot agree with it. Mr Sandhu submitted that even though the injunctions are couched in prohibitory terms they are really mandatory in effect. I do not agree. The defendants are restrained from doing the acts complained of in the application. They are not required to perform or do anything. I do agree that if the injunctions are granted the plaintiff can continue with its development works but that does not, in my view, make the injunctions mandatory in effect, although it certainly provides protection to the plaintiff to do what the government has given them the said land for. For the same reason, I do not agree that to grant the injunctions sought would be to grant the plaintiff virtually all the reliefs they seek. The declarations sought and the prayer for damages are prayers that must await final adjudication and the grant of these injunctions certainly does not decide those rights.

Although the plaintiff may not have surveyed the said land for the purposes of a lease in Form B of the First Schedule to the Code, it is abundantly clear from the EIA report that a survey of the boundaries of the said land has been conducted. Similarly, exh 'NP 2' attached to Khor Seow Hoon's affidavit affirmed on 5 May 2000 shows that a survey has been carried out for those blocks being worked on in phase 1 of the development which is where the confrontation between the plaintiff and defendants occurred. It is not correct to say therefore that it is not possible to ascertain the boundaries of the said land so that the defendants may be prohibited therefrom.

What the said land represents to each, the plaintiff and defendants?

The said land has been granted to the plaintiff for a dedicated purpose, namely, to be used for agricultural purposes and in particular planting of oil palm. The activities of the plaintiff on the said land accord with such purpose and by all accounts the plaintiff has organized itself for that purpose. It has commissioned an EIA study, appointed a subcontractor and begun to undertake development works. All these of course must necessarily result in the plaintiff investing considerable sums of money in development costs, equipment and manpower. I therefore agree with Mr Arthur Lee that any interruption or stoppage of works would cause delay putting the plaintiff to considerable inconvenience and expenses with the prospect of having to lay off workers and jeopardizing their livelihood.

Further, whereas the plaintiff must confine its activities within the said land, the defendants do not face any similar confinement as they claim to exercise customary rights over a very large area of land. If the defendants were to be restrained from entering the said land, they will still be able to exercise their customary rights over other areas claimed by them as their native customary land. Their livelihood would not be threatened as alleged and there would still be other areas which will constitute their most cherished asset to pass on to their descendants.

What I have stated above will apply equally to the licence granted to the plaintiff to take forest produce. That licence is of limited duration and confined only to the areas stated in the licence, whereas the defendants may look to forests outside those covered in the licence to continue to exercise their rights.

Delay

It was alleged that there has been unreasonable delay in the plaintiff coming to court for interim relief. I find that the facts do not bear out this allegation. The defendants wrote to the plaintiff on 28 January 2000 complaining about the activities of the plaintiff on the said land. In their letter of 28 January 2000, the defendants warned the plaintiff that if the plaintiff did not cease and/or desist from their activities, the defendants would have no alternative but to take appropriate action against the plaintiff 'including exercising our right of private defence against you without any further reference'. The defendants did not say what they were going to do by way of 'private defence', much less give any indication of violence or threats of violence and the setting up of barricades, roadblocks and dismantling of railway tracks and setting fire to the railway sleepers. The acts complained of really began on 17 April 2000. By 5 May 2000 the plaintiff had come to court. I cannot describe a period of some 18 days in coming to court as delay. There is accordingly no need for the plaintiff to explain away the alleged delay. There was none.

Having weighed the factors abovementioned, I find that the justice of this case is such that the harm that would result in the refusal of the grant of the injunctions sought outweigh the harm that would result from their grant. In so far as the status quo is concerned, I find that the status quo that requires to be preserved is the state of affairs that existed during the period immediately preceding the issue of the writ, (see *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130), namely, the plaintiff undertaking its drainage works and Its subcontractor taking forest produce under the licence. I accordingly grant with costs the plaintiff's application for interlocutory injunctions as prayed for until judgment or further order on the following terms:

> The defendants have expressed a fear that if the plaintiff is allowed to continue to plant up the said land, all evidence of the defendants' alleged padi farms, pepper and fruit gardens would disappear. As the remedy I am asked to administer is intended to produce a just result for the period between the date of this application and the trial, the defendants' fears can be alleviated by an

appropriate order allowing Francis anak Imban to enter the said land together with the plaintiff's representative to locate by a proper survey within the said land at the Bukit Keladang and lower Sungai Dasai area, the padi, rubber, oil palm and fruit gardens allegedly observed by him in these areas and to measure, for evidential purposes, their sizes. I have not included for the purposes of this term the alleged 'pulau' or 'temuda' or such like areas of the defendants as the working map supplied by the Superintendent shows that the government excluded areas of secondary growth/forest from the said land. The inspection and survey abovementioned is to be completed within a period of 30 days from the date hereof at the defendants' own expense.

Order accordingly.

Reported by Jafisah Jaafar